

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

STRUDEL HOLDINGS LLC AND AVR AH  
LLC,

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-90757 (CML)

(Jointly Administered)

**APPELLANTS' STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL  
AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE  
RECORD ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, Nineteen77 Capital Solutions A LP and Bermudez Mutuari, Ltd. (together, the “Lenders”), Wilmington Trust National Association, in its capacity as Administrative Agent (the “Administrative Agent” and together with the Lenders, the “Lenders Parties” or the “Appellants”), by and through their undersigned counsel, respectfully submit this statement of issues on appeal and designation of items to be included in the record on appeal, in connection with the *Notice of Appeal* dated November 9, 2023 [ECF No. 246].

**I. Statement of Issues to be Presented on Appeal**

On October 27, 2023, the Bankruptcy Court held a hearing on the Secured Parties’ *Motion to Dismiss the Chapter 11 Cases Pursuant to Section 1112(b) of the Bankruptcy Code* [ECF No.

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: AVR AH LLC (0148) and Strudel Holdings LLC (5426). The Debtors’ service address is: PO Box 4068, Aspen, CO 81612.

75] (the “MTD”) filed on August 24, 2023. After hearing argument, the Bankruptcy Court issued an oral bench ruling denying the MTD. An order denying the MTD was entered the same day.

The issues to be presented on appeal are:

1. Whether the Bankruptcy Court erred in denying the MTD by misapplying the legal standards for a bad faith chapter 11 filing under *Little Creek Dev. Co. v. Commonwealth Mortg. Corp. (In re Little Creek Development Co.)*, 779 F.2d 1068 (5th Cir. 1986), and other applicable law.
2. Whether the Bankruptcy Court erred in denying the MTD as to the Debtor Strudel Holdings LLC by finding that its bankruptcy petition was filed in good faith.
3. Whether the Bankruptcy Court erred in denying the MTD as to the Debtor AVR AH LLC by finding that its bankruptcy petition was filed in good faith.

## **II. Designation of Items to be Included in the Record on Appeal<sup>2</sup>**

Appellants designate the following items for inclusion in the record on appeal. Each designation of a pleading or matter of record includes all exhibits, appendices, and other items, if any, that are attached or referred to in such pleading or matter of record.

### **A. Docket Entries from Bankruptcy Case No. 23-90757**

<b>Items No.</b>	<b>Bankr. D.I.</b>	<b>Date</b>	<b>Description</b>
1	75	8/24/2023	Lender Parties Motion to Dismiss (“ <u>MTD</u> ”) and Declaration of James W. Burke in Support, including all Exhibits identified therein or attached thereto.
2	121	9/14/2023	Debtors’ Response in Opposition to MTD
3	211	10/19/2023	Official Transcript of Hearing Held on 10/19/2023 (order form filed at Dkt. No. 206)
4	213	10/25/2023	Lenders’ Exhibit and Witness List for MTD Hearing

<sup>2</sup> Pursuant to paragraph 6 of the Court’s notice at ECF No. 258, true and correct copies of the Lenders’ Exhibits and the Debtors’ Exhibits admitted into evidence at the October 27, 2023 hearing are attached hereto as Exhibit A and Exhibit B, respectively. Such exhibits also are designated in the chart below because they were also filed on the bankruptcy docket. See ECF Nos. 213 & 216.

Items No.	Bankr. D.I.	Date	Description
5	213-1	8/21/2023	Notice of Motion for Summary Judgment in Lieu of Complaint filed in <i>Nineteen77 Capital Solutions A LP v. Souki</i> , Index No. 654043/2023 (N.Y. Sup. Ct. N.Y. Cnty.)
6	213-12	5/26/2022	Email from Wilmington Trust, N.A. to Charif Souki, and attachments thereto, as retrieved from public docket for <i>Nineteen77 Capital Solutions A LP v. Souki</i> , Index No. 654043/2023 (N.Y. Sup. Ct. N.Y. Cnty.)
7	213-13	8/22/2023	Affidavit in Support of Plaintiffs' Motion for Summary Judgment in Lieu of Complaint filed in <i>Nineteen77 Capital Solutions A LP v. Souki</i> , Index No. 654043/2023 (N.Y. Sup. Ct. N.Y. Cnty.)
8	213-14	05/16/2023	Verified Motion for Order Authorizing Sale of Real Estate by the Public Trustee Pursuant to C.R.C.P. 120 filed in <i>Wilmington Trust National Association v. AVR AH, LLC</i> , No. 2023 CV 30050 (Colo. Dist. Ct. Pitkin Cnty.)
9	213-15	06/09/2023	Response to Verified Motion for Order Authorizing Sale of Real Estate by the Public Trustee Pursuant to C.R.C.P. 120 filed in <i>Wilmington Trust National Association v. AVR AH, LLC</i> , No. 2023 CV 30050 (Colo. Dist. Ct. Pitkin Cnty.)
10	213-16	06/20/2023	Notice of Reset Hearing filed in <i>Wilmington Trust National Association v. AVR AH, LLC</i> , No. 2023 CV 30050 (Colo. Dist. Ct. Pitkin Cnty.)
11	213-17	07/20/2023	Notice of New Auction Date and Change of Location for Pledged Ajax Holdings Interests sent by Wilmington Trust, N.A. to Charif Souki
12	213-18	07/10/2023	Second Amended Complaint filed in <i>Souki v. Nineteen77 Capital Solutions A LP</i> , Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.)
13	213-19	04/03/2023	Memorandum of Law in Support of Order to Show Cause for a Preliminary Injunction and Expedited Discovery filed in <i>Souki v. Nineteen77 Capital Solutions A LP</i> , Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.)
14	213-20	05/01/2023	Transcript of hearing before Justice Andrea Masley in <i>Souki v. Nineteen77 Capital Solutions A LP</i> , Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.)
15	213-21	06/14/2023	Decision to decline to sign an Order to Show Cause for a Preliminary Injunction in <i>Souki v. Nineteen77 Capital Solutions A LP</i> , Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.)
16	213-22	07/25/2023	Notice of Defendants' Motion to Dismiss filed in <i>Souki v. Nineteen77 Capital Solutions A LP</i> , Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.)

<b>Items No.</b>	<b>Bankr. D.I.</b>	<b>Date</b>	<b>Description</b>
17	213-23	08/10/2023	Strudel Holdings LLC's Statement of Financial Affairs, Case No. 23-90757, ECF No. 55
18	213-24	08/10/2023	AVR AH LLC's Statement of Financial Affairs, Case No. 23-90757, ECF No. 57
19	213-25	08/10/2023	Strudel Holdings LLC's Summary of Assets and Liabilities, Case No. 23-90757, ECF No. 54
20	213-26	07/27/2023	AVR AH LLC's Voluntary Petition for Non-Individuals Filing Bankruptcy Petition, Case No. 23-90758, ECF No. 1
21	213-27	08/10/2023	AVR AH LLC's Summary of Assets and Liabilities, Case No. 23-90758, ECF No. 56
22	213-28	07/27/2023	Objection to Claims and Complaint, Adv. No. 23-09003, ECF No. 1
23	213-29	10/23/2023	AVR AH LLC's Monthly Operating Report, Case No. 23-90757, ECF No. 207
24	213-30	10/23/2023	Strudel Holdings LLC's Monthly Operating Report, Case No. 23-90757, ECF No. 208
25	213-31	10/23/2023	Statement of Cash Receipts and Disbursements, Exhibit to Strudel Holdings LLC's Monthly Operating Report, Case No. 23-90757, ECF No. 208-1
26	213-32	09/27/2023	Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Superpriority Claims, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief, Case No. 23-90757, ECF No. 163
27	213-33	07/27/2023	Strudel Holdings LLC's Voluntary Petition for Non-Individuals Filing Bankruptcy Petition, Case No. 23-90757, ECF No. 1
28	216	10/25/2023	Debtors' Exhibit and Witness List for MTD Hearing
29	216-1	8/10/2023	Order (I) Approving the Bidding Procedures, (II) Scheduling Certain Dates with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Approving Contract Assumption and Assignment Procedures, and (V) Granting Related Relief (Dkt. No. 53)
30	216-2	8/10/2023	Strudel Summary of Assets and Liabilities Schedules for Non-Individual, Schedule A/B: Property Non-Individual, Schedule D: Non-Individual Creditors Having Claims Secured by Property, Schedule E/F: Creditors Who Have Unsecured Claims Non-Individual, Schedule G Non-Individual Executory Contracts and Unexpired Contracts and Unexpired Leases, Schedule H Non-Individual Codebtors, Declaration About Individual Debtors' Schedules (Dkt. No. 54)

Items No.	Bankr. D.I.	Date	Description
31	216-3	8/10/2023	AVR Schedule A/B: Property Non-Individual, Schedule D: Non-Individual Creditors Having Claims Secured by Property, Schedule E/F: Creditors Who Have Unsecured Claims Non-Individual, Schedule G: Non-Individual Executory Contracts and Unexpired Leases, Schedule H: Non-Individual Codebtors, Summary of Assets and Liabilities Schedules for Non-Individual, Declaration About Individual Debtor's Schedules (Dkt. No. 56).
32	216-4	9/1/2023	Order Granting, in Part, Plaintiff's Emergency Motion to Compel Discovery and Request for Status Conference (Dkt. No. 92)
33	216-5	9/21/2023	Stipulation and Agreed Order Regarding Motion Seeking Entry of an Order Precluding Certain Alleged Secured Parties from Submitting Credit Bids Pursuant to Sections 105 (a) and 363(k) of the Bankruptcy Code (Dkt. No. 143)
34	216-6	9/27/2023	Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Superpriority Claims, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief (Dkt. No. 163)
35	216-7	10/3/2023	Order Granting Debtors' Omnibus Motion Seeking Entry of an Order (I) Authorizing the Assumption and Assignment of Certain Unexpired Leases and (II) Granting Related Relief (Dkt. No. 178)
36	216-8	10/3/2023	Order Granting Debtors' Motion Seeking Entry of an Order Authorizing the Rejection of Co-Listing Agreement Nunc Pro Tunc to the Petition Date and Granting Related Relief (Dkt. No. 179)
37	216-9	10/4/2023	Order Regarding Coordinated Schedule for Contested Matter and Adversary Proceeding (Dkt. No. 180)
38	216-10	10/4/2023	Notice of Winning Bid and Back-Up Bid (Dkt. No. 181)
39	216-11	10/24/2023	Notice of Final Selection of Highest and Best Bid and Back-Up Bid for Sale Hearing Scheduled for October 27, 2023 (Dkt. No. 209), inclusive of exhibits thereto
40	216-12	N/A	Claim #1 filed by CICPS Distributors on August 14, 2023 (Claim 1-1)
41	216-13	10/25/2023	October 4, 2023 Auction Transcript
42	216-14	10/24/2023	Debtors' Motion for Entry of an Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, and (IV) Approving Notice of Bar Dates (Dkt. No. 210)

<b>Items No.</b>	<b>Bankr. D.I.</b>	<b>Date</b>	<b>Description</b>
43	216-15	8/11/2023	Discovery Requests
44	216-16	8/16/2023	Deposition Notices and Subpoenas
45	216-17	8/17/2023	Notice of Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases (Dkt. No. 68), inclusive of exhibits thereto
46	216-18	8/17/2023	Notice of Auction for the Sale of the Debtors' Assets Free and Clear of Any and All Claims, Interests, and Encumbrances (Dkt. No. 69), inclusive of exhibits thereto
47	216-19	9/10/2023	Debtors' Emergency Motion to Terminate Consultation Rights and Immediately Disqualify Credit Bid (Dkt. No. 114)
48	216-20	10/25/2023	In re Strudel Holdings LLC and AVR AH LLC Docket Sheet
49	216-21	3/15/2023	March 15, 2023 Notice of Foreclosure
50	216-22	7/20/2023	Notice of New Auction Date and Change of Location for Pledged Ajax Holdings Interests
51	218	10/25/2023	Appellants' Reply in Support of the MTD and Declaration of James W. Burke, including Exhibits
52	219	10/25/2023	SEALED Appellants' Reply in Support of the MTD and Declaration of James W. Burke, including Exhibits
53	223	10/25/2023	AVR's Combined Plan of Liquidation and Disclosure Statement
54	225	10/26/2023	Ajax Holdings LLC's Joinder to Debtors' Response in Opposition to MTD
55	229	10/27/2023	Order Denying MTD
56	238	N/A	Official Transcript of Hearing Held on October 27, 2023 (order form filed at Dkt. No. 244)
57	246	11/9/2023	Appellants' Notice of Appeal

**B. Docket Entries from Adversary Proceeding Case No. 23-09003**

<b>Items No.</b>	<b>Bankr. D.I.</b>	<b>Date</b>	<b>Description</b>
58	9	8/2/2023	Debtors' First Amended Complaint

Dated: November 24, 2023

Respectfully Submitted,

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